

Patent
42479-2500REMARKS

Applicant wishes to thank Examiner Gabel and Supervisory Primary Examiner Le for the courtesy of a telephone conference on July 28, 2004.

In accordance with the request to identify the known "CRP" abbreviation in the claims, the specification has also been amended on Page 7. Page 5 is amended to correct a typographical error.

The claims have been amended to address the second paragraph, 35 U.S.C. § 112 issues.

The issue of reaction mixture and reaction product has also been addressed. A reaction mixture can be considered to be the components that are added as shown in separate Sheet 1 while the reaction product is the result of hemolysing the whole blood and causing an agglutination reaction of the hemolysed whole blood sample with the antibodies. Also attached hereto in separate Sheet 2 is a graphic representation of the relationship between the predetermined antigen and the C-reactive protein (CRP).

During the telephone conference, the amendment of Claims 9 and 13 was discussed with regards to irradiating the reaction product with a wavelength within a range of 700 nm to 1000 nm. Applicant's attorney referred to the absorption spectrum of Figure 5 and the description in the specification on Pages 5 and 6 where the degree of agglutination of latex could be determined. In this regard the absorbance of hemolysis reagents a and b was approximately 0.2 across the wavelength spectrum of 700 nm to 1000 nm. The absorption peaks of hemoglobin occur below 600 nm and are not a factor within 700 nm to 1000 nm.

Thus, the ability of performing an agglutination immunoassay method with a sample of whole blood can be accomplished by a measurement with a wavelength such as 800 nm within a

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range of 700 nm to 1000 nm since Figure 5 demonstrates that absorbance for hemolysis reagents will not affect the measurement results.

The *Osten et al.* (U.S. Patent No. 5,729,333) was briefly discussed for the teaching relied upon in the Office Action of an absorbance of water in the range of 1150-1190 nm and free from the absorption of hemoglobin. Examiner Gabel reserved the right to further review a written submission of these points.

The Office Action had indicated that Claims 15, 19-21 and 23 would be allowed if a wavelength range which is substantially free from absorption by both hemoglobin and a hemolysis reagent was defined as approximately 800 nm. Applicant submits that these claims should also be allowed with a wavelength range of 700 nm to 1000 nm.

If there are any further questions with regards to the definitions of claims, the undersigned attorney would be receptive to a telephone conference.

In summary, it was believed that adequate support is disclosed in the drawings and specification for providing the wavelength range of 700 nm to 1000 nm in an amendment of Claims 9 and 13, and it is believed that these claims are now in condition for allowance over the art of record.

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It is believed that the case is now in condition for allowance, and an early notification of the same is requested.

I hereby certify that this correspondence is being sent via Facsimile at **571-273-0820** to Gailene Gabel, at the USPTO on August 23, 2004.

By: Sharon Farnus



Signature

Dated: August 23, 2004

Very truly yours,

SNELL & WILMER L.L.P.



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